APPEAL NO. 93384

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). On April 20, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues agreed upon and announced by the hearing officer were: 1) The correct date of claimant's injury; 2) the extent of claimant's injury; 3) whether claimant had reached maximum medical improvement (MMI), and if so; 4) her correct impairment rating; and if claimant had not reached MMI; 5) whether she continued to have disability. The hearing officer determined that the appellant, claimant herein, sustained an injury to her neck, back and right wrist, within the course and scope of her employment on (date of injury), and that claimant reached MMI on September 14, 1992, with zero percent whole body impairment.

Claimant contends that she sustained an injury in the course and scope of her employment before (date of injury) (in the fall of 1990); that she had carpal tunnel syndrome (CTS) to her left arm as well as her right arm; that she still has not reached MMI; and that if she has reached MMI she has whole body impairment of more than zero percent. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that she was employed as a machine operator by (employer) and that her job duties were to pull paper bags out of a machine, tie and stack them at the rate of 600 to 700 bags per minute, 40 hours per week, with occasional overtime. Claimant testified, and it is unrefuted, that she began to experience discomfort and pain in her hands and arms in August 1990. She states she continued working and, in October 1990, she felt something pull in her upper back. Claimant states she thought this was a pulled muscle and she continued to work "but after that it was like everything went down hill fast." Claimant continued to work and states she was off two weeks for Christmas and she thought "my muscle would be all right, heal up, [and she] could go back to work." Claimant testified that in "the first week of January" when she went back to work she was unable to work the machine and employer's "adjustor" took her to the company nurse who took her to see (Dr. W). Dr. W gave her some muscle relaxers and sent her home. Dr. W referred claimant to (Dr. G), an orthopaedic surgeon. Dr. G, in turn, eventually referred claimant to (Dr. H), a neurologist. Claimant also saw(Dr. E), a hand specialist, (Dr. D), a physical medicine specialist, (Dr. F), a consulting neurosurgeon, (Dr. McC), who did an MRI, (Dr. I), an assistant professor at Baylor College of Medicine, (Dr. L), who did a cervical CT scan, (Dr. U), and a number of other doctors. Eventually the Texas Workers' Compensation Commission (Commission) appointed (Dr. Ho) as a designated doctor. Dr. Ho certified MMI as of September 14, 1992, with a zero percent whole body impairment rating, which the hearing officer gave presumptive weight in her decision.

Dr. G, one of claimant's first doctors, by report dated February 4, 1991, diagnosed primarily cervical and lumbar straining type injuries. Dr. G, by report of April 8, 1992, commented that Dr. H, who saw claimant for a second opinion, found mild CTS "on the right." In that report, Dr. G referred claimant to Dr. E, the hand specialist. In a July 15, 1992, report, Dr. G states that Dr. E "could not demonstrate a carpal tunnel syndrome." Dr. G stated, "I have nothing further to offer her." By Report of Medical Evaluation (TWCC-69), Dr. G certified MMI on 9-4-92 "at the last visit, the patient had no objective evidence of orthopaedic disability." Claimant disputed Dr. G's TWCC-69 and this eventually resulting in Dr. Ho being appointed as a designated doctor.

Dr. D, who saw claimant on referral from Dr. McC, has a number of medical reports in the record beginning on May 16, 1991, where his impression was that claimant's "complaints are compatible with a right neck and nerve irritation and/or compression, with pain radiating to her forearm and shoulder." In a follow-up report of 5-28-91, Dr. D notes claimant is upset with the pain she is experiencing and suggests claimant might be seen by Dr. F, a neurosurgeon. In a follow-up of 8-6-91, Dr. D notes claimant has been seen by Dr. F and then Dr. D diagnosed "myofascial pain disorder." On 9-9-91, Dr. D notes some improvement and suggests a physical therapy (PT) program. On 10-10-92, Dr. D notes claimant stopped PT because of pain and indicates he will do a "nerve conduction study and electromyography of her right upper extremity . . . to reassess her previous diagnosis of mild carpal tunnel syndrome."

Dr. F, in a June 12, 1991 report, found: "1. Chronic cervical, thoracic and lumbar paravertebral myositis. 2. Right carpal tunnel syndrome."

Dr. I, of College of Medicine, in an October 27, 1992, report, found "[e]vidence of lumbar segmental instability with secondary myofascial pain and referred pain into the bi-gluteal regions with referred pain also into the lower extremities. . . . I suspect, however, that repetitive pulling-like activities may have destabilized the segment."

Dr. H, on referral from Dr. G, in a report dated September 11,1992, stated claimant ". . . has signs and symptoms of possible lumbar and cervical radiculopathy as well as carpal tunnel syndrome." Dr. H advised EMG and nerve conduction velocity studies of all four extremities.

Dr. Ho, the designated doctor, on a TWCC-69 dated 12-07-92, certified MMI on "09-14-92" with zero percent impairment. In the narrative, Dr. Ho stated "EMG and nerve conduction studies done on February 12, 1992, and September 23, 1992, were normal with no evidence of carpal tunnel syndrome." Dr. Ho stated that claimant's ". . . minimal cervical disc abnormality is not related to her work injury complaints. I agree with [Dr. G] that [claimant] had reached her MMI on 9-14-92."

The hearing officer, as part of the decision, has both a statement of evidence which recites the testimony and evidence and a discussion portion where the hearing officer interprets the evidence and explains how she reached her conclusions. The hearing officer, in pertinent part, made the following determinations:

FINDINGS OF FACT

4.On (date of injury), Claimant sustained an injury to her neck and lower back while she was working as a machine operator at [employer].

5.In January, 1991, Claimant sustained right carpal tunnel syndrome within the course and scope of her employment with [employer].

6.Since January 8, 1991, Claimant has been unable to obtain and retain employment at wages equivalent to the wage she earned prior to (date of injury).

7.[Dr. Ho] was the designated doctor appointed by the Texas Workers' Compensation Commission.

8.[Dr. Ho] certified Claimant as having reached maximum medical improvement on September 14, 1992, with a zero percent whole body impairment.

9.[Dr. Ho's] certification has not been overcome by the great weight of contrary medical evidence.

CONCLUSIONS OF LAW

3.Claimant sustained an injury to her back, neck, and right wrist within the course and scope of her employment with [employer] on (date of injury).

4.Claimant reached maximum medical improvement on September 14, 1992.

5.Claimant has a zero percent whole body impairment.

6.Claimant has had disability since January 8, 1991.

Claimant contends error in the hearing officer's Finding of Fact Nos. 4, 5, and 9, and Conclusions of Law Nos. 3, 4, 5, and 6, quoted above, on the basis that claimant contends all "her injuries occurred in 1990 and were only exacerbated when she returned to work on (date of injury). . . ." It is unrefuted that claimant had some symptoms in 1990, and the hearing officer in her discussion, states ". . . that Claimant sustained an injury in 1990, since

she related her symptoms to her employment during 1990." The hearing officer, however, finds that ". . . Claimant aggravated her preexisting injury while she was at work on (date of injury), thereby sustaining a 1991 injury. . . ." Whether the injury was a repetitive trauma injury and claimant first knew or should have known her condition may be related to her employment (Article 8308-4.14) or whether there was a new injury on (date of injury), is a question of fact for the hearing officer who is the sole judge of the weight and credibility to be given to the evidence. Article 8308-6.34(e). Claimant's first medical treatment was by Dr. W on January 7, 1991. Claimant's testimony is fuzzy in that she states she went back to work in January 2nd, testified she was unable to pull the bags and was taken to the doctor the same day, yet the doctor's records show the first visit was on January 7th, and at that time claimant reported her injury as occurring on January 2nd. Claimant consistently gives a date of injury of January 2nd to Dr. G and Dr. H. In any event, when presented with conflicting evidence, the trier of fact, in this case the hearing officer, may resolve inconsistencies in the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). In this instance, the hearing officer determined the date of injury to be (date of injury), when claimant sustained an injury to her neck and lower back. There is sufficient evidence to support that finding.

Claimant alleges error that in the hearing officer only found right CTS, ". . . when in fact [claimant's] arms and hands were hurting . . . [in] August 1990. . . ." The hearing officer, in her discussion, notes that claimant was first diagnosed with CTS "in her right hand only, on April 10, 1991, and that no tests were conducted prior to that date to indicate the absence of carpal tunnel syndrome." The earliest right CTS is mentioned in the April 10, 1991, report by Dr. G. As late as July 15, 1992, there is a doctor's report (Dr. G) which states that Dr. E "could not demonstrate a carpal tunnel syndrome." The hearing officer, in her discussion, mentions an "indefinite diagnosis" of CTS was not made until February 12, 1992. The hearing officer states: "Considering the uncertain nature of this diagnosis and the time which had elapsed since claimant stopped working, it does not appear that Claimant's left carpal tunnel syndrome, if any, was caused by her employment." There is evidence to support that statement and we are unable to say, as a matter of law, that such a finding is against the great weight and preponderance of the evidence. Atlantic Mutual Insurance Company v. Middleman, 611 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

Claimant further contends that she has not reached MMI and as Dr. I "has diagnosed her as having suffered a repetitious trauma injury and claimant seeks medical care for this injury." Both Dr. G and Dr. Ho, the designated doctor, certified MMI in September 1992 with zero percent impairment. Dr. I, in his 10-27-92 report, suggested an additional "work-up will be necessary to better explain the physics of the problem . . ." and in a follow-up visit on 02-16-93 opined "at this point a psychologic assessment and treatment is indicated, possibly with a pain specialist with psychologic expertise and consideration of some type of physical modality of treatment, such as swimming in a heated pool where range of motion is increased may be necessary." Article 8308-4.25(b) provides that if a dispute exists as to

MMI, and the parties cannot agree on a designated doctor, the Commission will select a designated doctor and "the report of the designated doctor shall have presumptive weight . . . unless the great weight of other medical evidence is to the contrary." Dr. Ho certified MMI on September 14, 1992, and Dr. G certified MMI on September 4, 1992. Opposed to these certifications are somewhat imprecise suggestions by Dr. I that some further "work-up" or therapy might be beneficial. Clearly Dr. I's nonspecific references to further therapy does not constitute the great weight of other medical evidence to the contrary. There is sufficient evidence to support the hearing officer's determination that Dr. Ho's certification has not been overcome by the great weight of contrary medical evidence. We would note in Article 8308-4.61, an injured employee is entitled to all health care reasonably required by the "compensable injury as and when needed" and that the eligibility for medical benefits does not necessarily cease because MMI has been reached. *See* Texas Workers' Compensation Commission Appeal No. 91125, decided February 18, 1992, and Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992.

Where, as here, there is sufficient evidence to support the hearing officer's determinations, there is no sound basis to disturb the decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust, would we be warranted in setting aside the decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge